IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

WEDNESDAY, THE THIRD DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT APPEAL NO : 1716 of 2004 & WA No. 1756 of 2004

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WRIT APPEAL NO : 1716 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 14/10/2004 in WP NO : 11036 OF 2004 on the file of the High Court.)

Between:

ENEN ELECTRICAL ENGINEERS (P) LTD. D.No. 11-1-474-1, Aravinda Nagar,

Anantapur, Rep by its Partners, Mr. Siddappa Kantharaju,S/o. K. Siddappa .

..... APPELLANT

AND

1 The Chief Engineer, Construction, Vidyut Soudha, AP Transco, Hyderabad.
2 Nitin Sai Constructions, 406, 6th Floor, Srinilaya Enclave, Ameerpet, Hyderabad Rep by its Managing Partner

.....RESPONDENT(S)

WRIT APPEAL NO :1756 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 14/10/2004 in WP NO : 11022 OF 2004 on the file of the High Court.)

Between:

ENEN ELECTRICAL ENGINEERS (P) LTD. D.No. 11-1-474-1, Aravinda Nagar,

Anantapur, Rep by its Partners, Mr. Siddappa Kantharaju,S/o. K. Siddappa .

..... APPELLANT

AND

1 The Chief Engineer, Construction, Vidyut Soudha, AP Transco, Hyderabad.

.....RESPONDENT(S)

Counsel for the Appellant: MR.KOTTE.ANJANEYULU (in both the appeals)
Counsel for the Respondent No.1: SMT.M.VINOBHA DEVI (in both the appeals)
Counsel for the Respondent No.2: None

The Court made the following Oral Judgment: (per Sri Devinder Gupta, CJ)

Appellant was rejected at the pre-qualification bid stage on the basis of not fulfilling the requisite tender criteria. In one case, it was stated by respondent No.1 that appellant is not meeting the qualification requirement as per Clause 17 of the qualification criteria under general terms and conditions as stipulated in the tender specification and in the other case it was pointed out that pre-qualification bid of the appellant was rejected because of poor performance of the works already awarded to the appellant. Learned single judge dismissed the writ petitions. Appeals are now preferred against the said order.

Learned counsel for the appellant submits that Clause 17 is in two parts. In so far as physical experience and financial turnover is concerned, appellant was meeting the same. But the respondent No.1 rejected the pre-qualification bid by invoking sub-clause (d) of Clause 17, which would be relevant only after qualification bid is accepted. Learned counsel for the appellant further submits that the poor performance attributed to the appellant is because of 1st respondent's own delay and the 1st respondent itself is responsible for the same, for which act, appellant cannot be made to suffer.

Coming to the question of evaluation of pre-qualification bid is concerned, we are of the view that a bidder must fulfill the qualification criteria, which include physical experience as well as financial turnover. So far as financial turnover is concerned, a bidder is required to submit statement showing the value of existing commitments and ongoing works as well as the stipulated period of completion remaining for each of the works. This statement is required to be issued by the Engineer-in-charge of the Department. May be that the appellant is qualified and entitled to be awarded the

contract, but it is for the respondent-Department to lay down the criteria as to how the contract is to be evaluated. Admittedly, one of the works allotted to the appellant has not been completed so far and the said performance has been taken by the respondent-Department as poor performance and on that basis, the pre-qualification bid has been rejected. There cannot be any interference in such like matters. In case appellant is aggrieved against the action of the respondent-Department and feels that the delay is on its part, the remedy of the appellant would be to seek redressal and claim damages against the respondent-Department, but, cannot insist upon accepting his pre-qualification bid.

We see no reason to interfere with the order of the learned single judge. The appeals are accordingly dismissed. No costs.

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DEVINDER GUPTA, CJ

Date: 3rd November, 2004

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C.V.RAMULU,J

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To

1. The Chief Engineer, Construction, Vidyut Soudha, AP Transco,

Hyderabad.

2. Two C.D. copies